

**PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
STATE OF TEXAS DEPARTMENT OF INFORMATION RESOURCES (DIR)
AND
COMPAQ COMPUTER CORPORATION (Vendor)
MASTER PRICE AGREEMENT
90-00151**

The State of Texas, acting by and through the Department of Information Resources (DIR) is the Participating Entity with authority to enter into this Participating Addendum on behalf of Texas state agencies as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) and local governments as defined in Section 791.003, Texas Government Code.

In addition to the terms contained in the Master Price Agreement, the parties agree that the following terms and conditions will apply to all purchases of Products and Services under the Master Price Agreement. All Procuring Agencies (as defined below) agree to these terms and conditions by procuring Products and Services under this Participating Addendum. This Agreement is limited to the sale of Compaq computer equipment as awarded based on the Texas Market Place Posting Number DIR-61900-HWARE.

1. Definitions

"Agreement Administrator" refers to the individual appointed by DIR to administer this Participating Addendum on behalf of the State of Texas, including Texas procuring agencies.

"Equipment" refers to desktop and laptop computers, servers, workstations, displays, peripherals and LAN and hardware components and spare parts listed in the vendor's ESS/ Peripherals to include: Monitors; Audio/Video cards; Accessories; Storage and Memory. This Agreement shall not include the following: Commodity Software (excluding operating system software), Printers, Networking Equipment, Scanners, Cameras, and Plotters.

"Procuring Agency" means any Texas State Agency as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) and local governments as defined in Section 791.003, Texas Government Code.

"Purchase Order" means any pre-paid transaction, such as a credit card purchase, Letter of Credit, electronic or paper document issued by the Participating entity which directs the Vendor to deliver Products or services pursuant to this Agreement.

"Servicing Subcontractors" refers to authorized subcontractors who may be assigned by the Participating Entity or Vendor to service the products listed in the purchase order. Servicing contractors must be certified by Vendor to service the products.

2. Scope of Work

No changes to this section are required by DIR.

3. Title Passage

No changes to this section are required by DIR.

4. Quantity Guarantee

No changes to this section are required by DIR.

5. Order of Precedence

No changes to this section are required by DIR.

6. Payment Provisions

Invoices will be submitted by vendor to the procuring agency. Invoices are due and payable thirty (30) days after receipt of a correct invoice by the procuring agency. The participating entity represents that all procuring agencies are tax exempt. The procuring agency agrees to provide documentation of its tax-exempt status to vendor upon request.

7. Agreement Term

No changes to this section are required by DIR.

8. Termination

A. Termination for Convenience.

At any time, Vendor or DIR may terminate this participating addendum, in whole or in part, by giving the other party thirty (30) days written notice; provided, however, neither Vendor, DIR nor a procuring agency has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted.

9. Non-Appropriation

No changes to this section are required by DIR.

10. Shipment and Risk of Loss

The procuring agency may request expedited shipping for an additional charge.

11. Warranties

No changes to this section are required by DIR.

12. Patent, Copyright, Trademark and Trade Secret Indemnification

No changes to this section are required by DIR.

13. Price Guarantees

In addition to the price guarantee in the WSCA Master Price Agreement, the price to the procuring agency under this participating addendum shall be the lowest price offered by vendor to any Texas governmental entity.

14. Equipment and Service Schedule

No changes to this section are required by DIR.

15. Product Substitutions

No changes to this section are required by DIR.

16. Technical Support

No changes to this section are required by DIR.

17. Year 2000

No changes to this section are required by DIR.

18. Product Delivery

No changes to this section are required by DIR.

19. Impracticality of Performance

A procuring agency may terminate a purchase order if it is determined by the procuring agency that Vendor will not be able to deliver product or services in a timely manner as a result of the above conditions to meet the business needs of the procuring agency.

20. Records and Audit

Vendor shall maintain adequate records to establish compliance with this participating addendum until the later of a period of four years after termination of this participating addendum or until full, final and unappealable resolution of all audit or litigation issues that arise under this participating addendum. Such records shall include documentation of the date each procuring agency placed an order, identification of the ordering procuring agency, the product and quantity ordered, including the name of the product and the publisher or manufacturer of the product, the procuring agency purchase order number, the order date, ship date, shipping address, the amount of the invoice sent to the procuring agency relating to the order, the record of procuring agency payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract and such other documentation as DIR may request.

Vendor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this participating addendum to DIR, the auditors designated by DIR, including auditors of the State Auditors' Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. Copies and printouts requested by DIR shall be provided by vendor without charge. DIR shall provide vendor ten business days' notice prior to inspecting, auditing and/or copying vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with the vendor's books and records shall be available to DIR staff and designees as needed to explain the books and records to the extent necessary for the audit or inspection to be performed. Vendor shall provide adequate office space to DIR staff during the performance of an audit.

If any inspection or audit performed hereunder reveals an aggregate overcharge to procuring agency of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such audit or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the audit or inspection, shall be reimbursed to DIR within thirty days from receipt of an invoice from DIR reflecting the cost of the audit or inspection.

In the event of a discrepancy between the amount determined by the Texas Comptroller of Public Accounts as having been paid to vendor on behalf of a procuring agency and the amount vendor calculates DIR's administrative fee provided for such procuring agency, the amount reflected by the Comptroller of Public

Accounts shall be presumed correct unless vendor can demonstrate to DIR's satisfaction that vendor's calculation of DIR's administrative fee is correct.

21. Independent Contractor

No changes to this section are required by DIR.

22. Use of Subcontractors

No changes to this section are required by DIR.

23. Indemnification

No changes to this section are required by DIR.

24. Amendments

No changes to this section are required by DIR.

25. Scope of Agreement

No changes to this section are required by DIR.

26. Invalid Term or Condition

No changes to this section are required by DIR.

27. Enforcement of Agreement

No changes to this section are required by DIR.

28. Web Site Maintenance

No changes to this section are required by DIR.

29. Equal Opportunity Compliance

No changes to this section are required by DIR.

30. Limitation of Liability

No changes to this section are required by DIR.

31. Applicable Law

This participating addendum shall be governed by the laws and statutes of the State of Texas.

32. Change in Contractor Representatives

Vendor shall appoint a primary representative to work with the participating addendum administrator to maintain, support and market this participating addendum. DIR reserves the right to require a change in vendor's then-current primary representative if the representative is not, in the opinion of DIR, serving the needs of the State of Texas adequately.

33. Release

No changes to this section are required by DIR.

34. Confidentiality

Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act, Chapter 557, Texas Government Code. Vendor also acknowledges that DIR will not only comply with the Texas Public Information Act, but also all the opinions of the Texas Office of the Attorney General concerning this Act.

35. Conflict of Interest

No changes to this section are required by DIR.

36. Replacement Parts

No changes to this section are required by DIR.

37. FCC Certification

No changes to this section are required by DIR.

38. Site Preparation

No changes to this section are required by DIR.

39. Assignment

Vendor shall not assign or transfer any interest in this participating addendum or assign any claims for money due or to become due under this participating addendum without the prior written approval of DIR.

40. Agreement Administrator

DIR shall appoint a participating addendum administrator whose duties shall include but not be limited to the following:

- A. The administrator shall provide instructions regarding the contents of the Vendor's web site.
- B. The administrator shall make use of the participating addendum available to procuring agencies.
- C. The administrator shall advise DIR regarding Vendor's performance under the terms and conditions of this participating addendum.
- D. The administrator shall receive and approve quarterly price agreement utilization reports and the administration fee payments.
- E. The administrator shall periodically verify the product prices in the ESS conform to the Vendor's volume price guarantees.

41. (no section 41 listed in Master Agreement)

42. Survival

No changes to this section are required by DIR.

43. Lease Agreements

This section is deleted in its entirety. Lease agreement terms and conditions have not been approved for use under this participating addendum.

44. Succession

No changes to this section are required by DIR.

45. Notification

To DIR:
Bill Peek
Texas Department of Information Resources
300 West 15th Street, Suite 1300
Austin, TX 78701
Telephone: (512) 463-3253
e-mail: bill.peek@dir.state.tx.us

To Vendor:
Michael A. Gasparino
Compaq Computer Corporation
1124 Tower Road
Schaumburg, IL 60173-4306
Telephone: (847) 781-6508
mike.Gasparino@compaq.com

46. Administration and Reporting Fees

The Vendor shall submit a check payable to Texas Department of Information Resources for an amount equal to three-fourth percent (3/4%) of the net sales for the month. The total administrative fee due shall not be less than \$130,000.00 for any given year. Payments shall be paid monthly based on the sales as calculated below.

The total Administrative Fee due shall be not less than \$130,000 for each 12 month period (the "Annual Period"). The first Annual Period will be from September 1, 2001 through August 31, 2002. Until payment of \$130,000 in Administrative Fees is made in an Annual Period, the Vendor will administer payment of the Administrative Fees to DIR in the following manner:

1. For each of the first two months of a calendar quarter, Vendor will submit a check to DIR for the actual net sales for each month.
2. At the end of the third month of the quarter, Vendor will determine the net sales for the month and submit a check to DIR for either: (a) three quarters of one percent (3/4%) of the net sales for the month; or (b) \$32,502.00 less the payments for the first two months of the quarter; whichever is greater.
3. After the Vendor has paid DIR \$130,000.00 in Administrative Fees for an Annual Period, the Vendor will pay DIR the Administrative Fee on a monthly basis based on sales.
4. At the end of each Annual Period, Vendor will reconcile the Administrative Fees owed to DIR for such Annual Period. The reconciliation will result in the total Administrative Fee payments to DIR for the Annual Period being: (a) three quarters of one percent (3/4%) of the sales for the Annual Period; or (b) \$130,000; whichever is greater.

Vendor agrees to provide monthly addendum utilization reports to the addendum administrator in accordance with the following schedule. The reports will be due fifteen (15) calendar days after the end of each month. All reports are to be submitted electronically as defined by DIR.

- A. Monthly report shall state the sales under the participating addendum. The report shall be accompanied with a check payable to Texas Department of Information Resources for the calculated administrative fee.
- B. Detail sales report will be issued monthly that includes no less than each procuring agency, order date, ship date, manufacturer, quantity, procuring agency price, extended price, procuring agency purchase order number, shipping address, and other information as required by DIR.

C. Reports as required by DIR that will reflect the amount of work being subcontracted to Historically Underutilized Businesses, as defined by Texas State law.

The failure to file the utilization reports and fees on a timely basis shall constitute grounds for suspension of the participating addendum or termination of the participating addendum for cause. Vendor's liability for any breach of this Section shall not under any circumstances exceed the amount of administrative fees owed to DIR by vendor under this section.

47. Servicing Subcontractor

Vendor will make efforts to determine the identity of the authorized servicing contractor that has assisted the customer in the event that a procuring agency does not designate an authorized servicing contractor

48. Certified Education Partner

Vendor will make efforts to determine the identity of the certified education partner that has assisted the customer in the event that a procuring agency does not designate a certified education partner

49. Agreement Structure

Each purchase order issued under this participating addendum that is accepted by vendor will be subject to this participating addendum. Purchase transactions between the parties shall be governed by the terms and conditions of this participating addendum and any attachments thereto. In the event of a conflict between a term of this participating addendum (or an attachment to the participating addendum) and a purchase order issued by a procuring agency, the participating addendum term shall control. No additional term and condition of a purchase order issued by a procuring agency can weaken a term or condition of this participating addendum.

50. Technology Access

Vendor expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments (Texas Government Code Section 2157.005). Accordingly, vendor represents and warrants to DIR and each procuring agency purchasing products under this participating addendum that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (1) providing equivalent access for effective use by both visual and non-visual means; (2) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar State or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

51. Vendor Certifications

Vendor certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or Service to a public servant in connection with this participating addendum; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 31.006 of the Texas Family Code and acknowledges this participating addendum may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or

indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR, the procuring agency or any of their employees for participating in the preparation of this participating addendum; and (v) during the term of this participating addendum, it will not discriminate unlawfully against any employee or applicant and that, upon request it will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

52. Suits or Pending Proceedings

To the best of vendor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the vendor, which if determined adversely to the vendor will have a material adverse effect on the ability of the vendor to fulfill its obligations under the participating addendum.

53. Commodity Software

Texas Government Code, Section 2157.068 requires State Agencies and State of Texas Institutions of Higher Education to buy commodity software in accordance with contracts developed by DIR unless the agency obtains a waiver from DIR. Therefore, vendor agrees to coordinate all commodity software sales made coincident to this participating addendum through existing DIR contracts if available.

54. Dispute Resolution

For disputes not resolved in the ordinary course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used to resolve any claim for breach of contract.

55. Buy Texas

With respect to all services, if any, purchased under this participating addendum, vendor represents and warrants that it shall buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials. Vendor agrees to make reasonable efforts to comply with this provision. Any breach of this paragraph by vendor shall not be considered a material breach of this participating addendum. When requested by DIR, vendor shall timely provide documentation satisfactory to DIR evidencing the use of Texas products and materials for providing any services provided under this participating addendum. If vendor is unable to find Texas products and materials to use in providing any services provided hereunder, upon DIR's request, vendor shall provide documentation satisfactory to DIR evidencing vendor's good faith efforts to purchase and use Texas products and materials in providing services hereunder.

56. Ability to Conduct Business in Texas

The vendor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas or any of its political subdivisions.

Vendor acknowledges and agrees that, to the extent Vendor owes any debt or delinquent taxes to the State of Texas, in accordance with Section 403.055(h), Texas Government Code, any payments vendor is owed under this participating addendum will be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes vendor owes the State of Texas until the debt or delinquent taxes are paid in full.

Vendor is a "Qualified Information Systems Vendor" as defined in Section 2157.001, Texas Government Code. All Products and Services offered to procuring agencies under this participating addendum are listed in vendor's catalogue on file with the General Services Commission.

DIR is prevented by law from selling products or services to other than governmental entities as defined in Texas Government Code, Section 2251.001 and Texas Education Code, Section 61.003.

57. Promotion of Agreement

Vendor may use the DIR logo in the promotion of this participating addendum to procuring agencies with the following stipulations: (a) the logo may not be modified in any way; (b) when displayed, the size of the DIR logo must be equal to or smaller than the Vendor's logo; (c) the sole use of the DIR logo will be to communicate the availability of the products and services available under this participating addendum to procuring agencies; and (d) any other use of the DIR logo requires DIR's prior written approval.

DIR may use the vendor's name and logo in the promotion of this participating addendum to procuring agencies to communicate the products and services available under this participating addendum to procuring agencies with the following stipulations: (a) use of the logo may be on the DIR Web Site or on printed materials distributed to procuring agencies; (b) DIR agrees to comply with any guidelines provided by vendor on the proper use of vendor's logo; and (c) any other use of vendor's name or logo requires vendor's prior written approval.

If vendor is contacted by, or contacts, a potential procuring agency concerning buying information resources technologies that are already available under this participating addendum, vendor will use reasonable efforts to make the potential procuring agency aware of this participating addendum and the ability of the potential procuring agency to buy hereunder.

58. Training

The vendor agrees to provide product overview training to DIR at no charge. The training will be held within the Austin area at times mutually agreed to by the vendor and DIR.

59. Trade Shows

Vendor understands and agrees that it must provide a staffed booth display or similar presence at no less than two trade shows or similar functions sponsored by DIR each calendar year, at Vendor's expense. Vendor agrees to display the DIR logo at all trade shows directed toward entities that qualify as DIR customers.

60. Price Agreement Number

All purchase orders issued by procuring agencies within the State of Texas shall include the following price agreement number: 90-00151.

This participating addendum, together with the exhibits, set forth the entire agreement between the parties and supercedes all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this participating addendum, together with its exhibits, shall not be added to or incorporated into this participating addendum and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this participating addendum and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this participating addendum as of the date of execution by both parties below.

State of Texas, acting by and through the
Department of Information Resources

By: Patrick W. Hogan

Name: Patrick W. Hogan

Title: Director, Business Operations

Date: 8/29/01

Legal: JK

Compaq Computer Corporation

By: Ron Smith

Name: Ron Smith

Title: Director, N.A. Contracts & Bids

Date: 8-31-01